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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JC PICKETT, a minor child, KV
8 PICKETT, a minor child, ANESSA
9 PICKETT, an individual, IAN
10 PICKETT and KHALIA PICKETT,
husband and wife, both individually
and on behalf of their minor children,

11 Plaintiffs,

12 v.

13 LIBERTY MUTUAL INSURANCE
COMPANY,

14 Defendant.

NO. 2:20-CV-0426-TOR

ORDER DENYING NON-PARTY
TEMPORARY HOUSING, INC.'S
MOTION FOR PROTECTIVE
ORDER

15 BEFORE THE COURT is Non-Party Temporary Housing, Inc.'s Motion for
16 Protective Order (ECF No. 17). This matter was submitted for consideration
17 without oral argument. The Court has reviewed the record and files herein, and is
18 fully informed. For the reasons discussed below, Non-Party Temporary Housing,
19 Inc.'s Motion for Protective Order (ECF No. 17) is **DENIED**.

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ORDER DENYING NON-PARTY TEMPORARY HOUSING, INC.'S
MOTION FOR PROTECTIVE ORDER ~ 1

BACKGROUND

This case concerns an insurance dispute that arose after a fire destroyed Plaintiffs' home and personal belongings therein. *See* ECF No. 1-1. On October 8, 2020, Plaintiffs filed this suit against Defendant Liberty Mutual Insurance, Inc. in Ferry County Superior Court. ECF No. 1-1. On November 18, 2020, Defendant timely removed the action to the Eastern District of Washington. ECF No. 1. On February 19, 2021, the Court appointed Khalia Pickett as Guardian Ad Litem for minor Plaintiffs J.C. and K.V. ECF No. 16.

On June 11, 2021, non-party Temporary Housing, Inc. ("THI") filed the present motion. ECF No. 17. Plaintiffs filed a response, and Defendant and THI filed separate replies. ECF Nos. 21, 23, 25. The present matter is a dispute over subpoenas issued to THI as a non-party in this case who is now a party in a separate action initiated by Plaintiffs (case number 2:21-CV-0174-TOR). ECF No. 17.

DISCUSSION

A. Motion for Protective Order

Pursuant to Federal Rule of Civil Procedure 26(b)(1), "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." However, "any person from whom discovery is sought may move for a protective order in the court where the

1 action is pending The court may, for good cause, issue an order to protect a
2 party or person from annoyance, embarrassment, oppression, or undue burden or
3 expense,” including “forbidding the disclosure or discovery.” Fed. R. Civ. P.
4 26(c)(1)(A). Moreover, a non-party may move to quash a subpoena issued by a
5 party. Fed. R. Civ. P. 45. A court must quash or modify a subpoena if it: “(i) fails
6 to allow a reasonable time to comply; (ii) requires a person to comply beyond the
7 geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or
8 other protected matter, if no exception or waiver applies; or (iv) subjects a person
9 to undue burden.” Fed. R. Civ. P. 45(d)(3)(A). The Court is vested with broad
10 discretion to permit or deny discovery. *Hallett v. Morgan*, 296 F.3d 732, 751 (9th
11 Cir. 2002).

12 Here, THI moves to quash Plaintiffs’ subpoena under Rule 45 on the
13 grounds that it is now a defendant in a separate action with Plaintiffs, arguing that
14 Plaintiffs are constrained in seeking the documents in this action because the Rule
15 26(f) conference has not occurred in the separate action. ECF No. 17 at 4. THI’s
16 argument puts the cart before the horse. Plaintiffs’ actions against Defendant and
17 THI are separate, with separate discovery deadlines. Moreover, THI has moved to
18 dismiss the separate action against it, thus seeking to completely avoid that avenue
19 for discovery. *See* ECF No. 4 in case number 2:21-CV-0174-TOR.

1 The Court declines to address THI and Defendant's arguments that the cases
2 should be consolidated, as the issue was briefed for the first time in their replies,
3 ECF Nos. 23, 25. *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007)
4 ("[D]istrict courts need not consider arguments raised for the first time in a reply
5 brief.").

6 The Court finds that THI has failed to establish good cause for a protective
7 order and has failed to establish an undue burden as a non-party in this action.
8 Therefore, the motion for protective order is denied.

9 **ACCORDINGLY, IT IS HEREBY ORDERED:**

10 Non-Party Temporary Housing, Inc.'s Motion for Protective Order (ECF
11 No. 17) is **DENIED**.

12 The District Court Executive is directed to enter this Order and furnish
13 copies to counsel.

14 DATED July 13, 2021.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

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THOMAS O. RICE
United States District Judge